



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

25 CRIMINAL APPLICATION NO.4402 OF 2023

- 1 Uday Venkatrao Kulkarni,
Age 65 yrs., Occ. Retired,
R/o Plot No.20, N-1, A-Sector,
CIDCO, Aurangabad.
- 2 Kalpana w/o Uday Kulkarni,
Age 57 yrs., Occ. Service,
R/o Plot No.20, N-1, A-Sector,
CIDCO, Aurangabad.
- 3 Sapna d/o Uday Kulkarni,
Age 34 yrs., Occ. Household,
R/o Plot No.4, Manik Nagar,
Hindu Rashtra Chowk, Garkheda,
Aurangabad.
- 4 Smita w/o Abhishek Bhalerao,
Age 28 yrs., Occ. Household,
R/o N-11, B 46/3,
Subhash Chandra Bose Nagar,
T.V. Centre, HUDCO, Aurangabad.

... Applicants

... Versus ...

- 1 The State of Maharashtra
Through MIDC Police Station,
Aurangabad.
- 2 Kanchan w/o Kishor Muley,
Age 55 yrs., Occ. Homemaker,
R/o Plot No.20, A-Sector,
CIDCO, Aurangabad.

... Respondents

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Mr. K.S. Kahalekar, Advocate h/f Mr. N.S. Ghanekar, Advocate for applicants

Mr. G.A. Kulkarni, APP for respondent No.1

Mr. M.M. Kadt, Advocate for respondent No.2

...

WITH

CRIMINAL APPLICATION NO.4420 OF 2023

Abhishek Chandrakant Bhalerao,
Age 35 yrs., Occ. Chartered Accountant,
R/o N-11, B 46/3,
Subhash Chandra Bose Nagar,
T.V. Centre, HUDCO, Aurangabad.

... **Applicant**

... **Versus** ...

- 1 The State of Maharashtra
Through MIDC Police Station,
Aurangabad.
- 2 Kanchan w/o Kishor Muley,
Age 55 yrs., Occ. Homemaker,
R/o Plot No.20, A-Sector,
CIDCO, Aurangabad.

... **Respondents**

...

Mr. K.S. Kahalekar, Advocate h/f Mr. N.S. Ghanekar, Advocate for applicant

Mr. G.A. Kulkarni, APP for respondent No.1

Mr. M.M. Kadt, Advocate for respondent No.2

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CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.

DATE : 16th JULY, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 In both the applications the applicants have prayed for quashment of First Information Report vide Crime No.301/2023 dated 29.06.2023 registered with MIDC CIDCO Police Station, Aurangabad City, for the offence punishable under Sections 306, 504 read with Section 34 of the Indian Penal Code, 1860 and later on by way of amendment for quashing charge sheet No.47/2024 dated 29.02.2024.

2 Heard learned Advocate Mr. K.S. Kahalekar holding for learned Advocate Mr. N.S. Ghanekar for applicants, learned APP Mr. G.A. Kulkarni for respondent No.1 and learned Advocate Mr. M.M. Kadtu in both applications.

3 Learned Advocate appearing for applicants has stated that applicant Nos.1 and 2 from Criminal Application No.4402 of 2023 are husband and wife and applicant Nos.3 and 4 therein are their daughters. Applicant in Criminal Application No.4420 of 2023 is the husband of applicant No.4 in Criminal Application No.4402 of 2023. The fact is not in dispute that husband of informant – respondent No.2 Kishor Mule and present applicant No.2 Kalpana had purchased plot No.20 from Sector – A, N-1, CIDCO in 1991.

4 Learned Advocate for applicants further submits that according to informant, after the plot was purchased, it was divided into half for each of them and then the informant's husband after taking due permission from CIDCO had made construction on the half of the plot. According to them, her husband had asked the applicants regarding the common wall to be constructed and since they had given consent, informant with her family income had constructed the common wall in 1997 and on that wall there was a parapet wall. According to informant, present applicants had made construction about 15 to 20 years prior which was restricted to the ground floor. Though the plot was standing in the name of both of them; yet, without taking consent from the informant's husband applicant Kalpana brought permission from the Municipal Corporation about three months prior to the First Information Report for construction of the upper floors and then made the construction of first floor and second floor. Without their permission they had started digging holes in the common wall. They demolished the parapet wall. As a result of which, due to seepage the rain water started coming in their house. When the informant and her husband went to have a word with the applicants around 1.00 p.m. on 20.06.2023, at that time the applicant Kalpana was not at home, but her husband, married daughter Smita and son-in-law Abhishek as well as another daughter Sapna gave abuses in filthy language to informant's husband and mother-in-law.

The informant's husband was insulted and, therefore, he was under tremendous tension for about eight days. On 28.06.2023 due to the damage of parapet wall and concrete beam that was constructed by the applicants water clogged in the bed room, hall and kitchen of the informant. It was due to negligence on the part of neighbour i.e. present applicants while making construction. Informant's husband then made correspondence to the Municipal authority for stopping the construction of applicants. The informant then says that around 5.00 p.m. on 28.06.2023 when the informant and mother-in-law were on the first floor of her husband, her husband went to the room, which was on the ground floor and did not come for much time, informant went and saw that her husband has committed suicide by hanging himself to the fan. He was declared dead around 18.10 p.m. at MGM Hospital. They found one chit left by deceased Kishor in the pocket of his pant. The informant, therefore, states that applicants have committed abetment and lodged the report.

5 Learned Advocate for applicants submits that the applicants are not disputing the fact that Kishor has committed suicide, but they are disputing the allegations that applicants have abetted the commission of said suicide. The documents on record would show that there were disputes since beginning i.e. after the plot was purchased. There is a document i.e. part of

the charge sheet, which shows that on 07.09.1995 even the applicant No.2 Kalpana had given amount of Rs.10,500/- towards the common wall. But on 31.10.1995 applicant Kalpana had given a notice to Kishor stating that though she had paid amount of Rs.10,500/- for the common wall, while erecting the same, encroachment has been made to the extent of four inches in the plot of applicant Kalpana and he has not taken down the encroached portion as well as the rolling. But thereafter by taking permission from Municipal Corporation the present applicants had started the construction. If the deceased and informant had any objection regarding the same, they ought to have raised it before the appropriate authority. Now, it is stated that some incident had taken place on 20.06.2023 and the statement of mother-in-law of informant is also to that extent, but it is not stated as to which abuses were given by other applicants and in fact, the allegations also say that applicant Kalpana was not even present in the house when alleged incident had taken place. The incident had taken place on 20.06.2023, the suicide has been committed on 28.06.2023, therefore, there is absolutely no proximity between the same. The charge sheet also includes the document in respect of permission granted for construction. The suicide note also states that the abuses were filthy and he says that he got hurt because of abuses given to his mother. Without giving details of abuses it cannot be stated that the incident was so grave, that would have disturbed the mind of deceased

for about eight days. He could have lodged the report in respect of said incident to the police and police would have taken action against the applicants, but by no stretch of imagination it can be said that the ingredients of Section 306 of the Indian Penal Code are made out.

6 Per contra, learned APP as well as learned Advocate appearing for respondent No.2 strongly opposed the applications and submitted that charge sheet is filed and statements of witnesses including First Information Report and other documents would show that the incident had taken place on 20.06.2023, whereby abuses were given in filthy language to mother of deceased. Even the elderly persons have not been spared at that time and, therefore, as per the suicide note it had been taken by the deceased as grave incident. He has also stated that applicants were torturing his family since last many years and he could not then withstand the said treatment. This definitely amounts to abetment and, therefore, let there be trial.

7 Before proceeding to assess the facts, we would like to take account of legal aspects involved in the matter as to what is required for even *prima facie* bringing the case under Section 306 of the Indian Penal Code and for that purpose we would like to rely on the decisions in **Dilip Ramrao Shirasao and others vs. State of Maharashtra and another** [2016 ALL MR (Cri) 4328], **Sanju alias Sanjay Singh Sengar vs. State of Madhya Pradesh**

[2002 Cri.L.J. 2796], **Madan Mohan Singh vs. State of Gujrat and another** [(2010) 8 SCC 628], **S.S. Chheena vs. Vijay Kumar Mahajan** [2010 All MR (Cri) 3298 (S.C.)] and **R. Shashirekha vs. State of Karnataka and others** [2025 INSC 402]. Taking into consideration the ratio laid down in all these authorities and the fact in present case, definitely, ingredients of any of the offences under which charge sheet is filed are not at all attracted. Further, it has been observed in one of the recent Judgments in **Mahendra Awase vs. The State of Madhya Pradesh** [2025 INSC 76] that merely for the satisfaction of informant Investigating Officer should not file charge sheet against accused, arrayed in offence under Section 306 of the Indian Penal Code. In **Amalendu Pal @ Jhantu vs. State of West Bengal** [(2010) 1 SCC 707] similar view that of **M. Mohan** (supra) is taken, wherein it was held that -

“In a case of abetment of suicide, there must be proof of direct or indirect act(s) of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the deceased to commit suicide, conviction in terms of Section 306 of the Indian Penal Code would not be sustainable.”

7.1 In **Chitresh Kumar Chopra vs. State** (Govt. of NCT of Delhi) [2009 16 SCC 605], the dictionary meaning of the word ‘instigation’ and ‘goading’ was taken note of. It was opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person’s

suicidability pattern is different from the others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on its own facts and circumstances.

7.2 In **R. Shashirekha** (supra) in paragraph No.13 the Hon'ble Supreme Court has observed that -

13. Assuming that the allegations are true, even otherwise, the case under Section 306 of IPC would not be made out. Recently, this Court in a case of **Prakash and others vs. State of Maharashtra and another** [2024 SCC OnLine SC 3835] in which one of us (Gavai, J.) was a Member has considered all the earlier judgments with regard to Section 306 of IPC. After referring to the earlier judgments, this Court has observed thus :

“31. In the case of **Sanju @ Sanjay Singh Sengar** (supra), this Court, under similar circumstances, had quashed the charge sheet under Section 306 of the IPC against the accused- appellant. A factor that had weighed with the Court in the said case was that there was a time gap of 48 hours being the alleged instigation and the commission of suicide. This Court held that the deceased was a victim of his own conduct, unconnected with the quarrel that had ensued between him and the appellant, 48 hours prior to the commission of his suicide.

32. In the case at hand, taking the allegations in the FIR at face value, the incident at the mahalokadalat had occurred on 17th February 2015, while the deceased had committed suicide on 20th March 2015. There is a clear gap of over a month between the incident at the mahalokadalat and the commission of suicide. We therefore find that the courts below have erroneously accepted the prosecution story that the act of suicide by the deceased was a direct result of the words uttered by the appellants at the mahalokadalat.

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34. The cardinal principle of the subject-matter at hand is that there must be a close proximity between the positive act of instigation by the accused person and the commission of suicide by the victim. The close proximity should be such as to create a clear nexus between the act of instigation and the act of suicide. As was held in the case of **Sanju @ Sanjay Singh Sengar** (supra), if the deceased had taken the words of the appellants seriously, a time gap between the two incidents would have given enough time to the deceased to think over and reflect on the matter. As such, a gap of over a month would be sufficient time to dissolve the nexus or the proximate link between the two acts.”

8 Now, after considering the law that is required to be considered, we would like to consider the facts of the case. Most of them are not disputed when it is the fact of purchase and the fact of suicide. Though there appears to be *prima facie* evidence for suicide, we cannot jump to the conclusion that there is also *prima facie* evidence for abetment also. The plot was purchased in the year 1991 and deceased Kishor Mule had made construction first in point of time on the half portion of plot. It also appears that in 1997 the common wall was constructed. The document dated 07.09.1995 was not referred in First Information Report, but it appears to have been collected by Investigating Officer, which was part of the documents produced before the Municipal authorities. On 07.09.1995 it appears that applicant Kalpana had given post dated cheque for Rs.10,501/- towards her contribution to the common wall. But it appears that on 31.10.1995 certain

objections were raised by applicant Kalpana and since those conditions were not followed, said cheque for Rs.10,501/- was stopped from honouring. Certainly, it appears that then there was a dispute which was not insisted upon as it appears from the facts of the case. But all that had happened that was in 1995. It is then stated by informant that common wall and parapet was constructed by deceased Kishor in 1997 with his own funds. It is then stated that applicant Kalpana made construction in her plot about 15-20 years which was to the extent of ground floor and further construction was started in 2021 in respect of first and second floor. If there was objection for the same, Kishor could have raised objection before the Municipal Authorities. He then states that the common wall and the slab, parapet wall was demolished. This could have also been raised before the Municipal authorities and the informant has not given when that demolition had taken place. All of a sudden then after about two years i.e. on 20.06.2023 it is stated that Kishor and his mother went to the house of applicant Nos.1 and 2 for persuading them. In First Information Report itself it is stated that applicant Kalpana was not at home. That means, she had not taken part in any manner in the incident that had allegedly taken place on 20.06.2023. Then the question arise, as to why she has made as an accused and in what manner she has abetted the commission of suicide by deceased Kishor. This shows *mala fides* on the part of respondent No.2 towards one of the

applicants in clear terms i.e. as against applicant Kalpana.

9 Now, as regards the incident dated 20.06.2023 around 1.00 p.m. is concerned, it is stated that the other applicants had abused Kishor and his mother Kamalbai in filthy language. Informant says that because of the same her husband thought insulted. Neither she in her First Information Report nor Kamalbai in her statement under Section 161 of the Code of Criminal Procedure has stated as to which abuses were given. The entire incident that had taken place inside the house of applicants has not been given in detail. Merely by using the word 'filthy abuses', the thing will not be inferred that it amounted to insult. Now, in the suicide note it is stated that the abuses were given to Kishor as well as to his mother and as the abuses were given to his mother, he felt bad about it. We would like to reproduce the suicide note and translation thereof.

Suicide Note

“कल्पना उदय कुलकर्णी यांचा परीवार यांनी दिनांक 20.06.2023 रोजी माझी पॅराफीट वाल तोडून मला व माझ्या आईला शिवीगाळ केली. त्यात उदय कुलकर्णी, मुलगी सपना व दुसरी मुलगी स्मीता व जावई (स्मीताचा नवरा) भालेराव (CA) यांनी अत्यंत खाल्या शब्दात शिवीगाळ केली. आईला केलेल्या शिवीगाळ माझ्या जिव्हारी लागली. हे लोग गेली बरेच वर्षे त्रास देत आहेत म्हणुन मला हया गोष्टी सहन न झाल्याने मी जागाचा निरोप घेत आहे.”

Translation

“On 20.06.2023, the family of Kalpana Uday Kulkarni broke my parapet wall and verbally abused me and my mother. Among them, Uday Kulkarni, his daughter Sapna, his other daughter Smita, and son-in-law Bhalerao (a Chartered Accountant, Smita’s husband) used extremely vulgar and offensive language. The abuse directed at my mother deeply hurt me. These individuals have been harassing us for many years. Unable to endure this any longer, I am bidding farewell to the world (I am ending my life).”

10 As on today, we accept that this is the suicide note which has been left by deceased, but it can be seen that it is left by deceased by writing on 28.06.2023. But it is in respect of incident alleged to have taken place on 20.06.2023. Neither the informant nor Kamalbai nor in the suicide note or even by any other witness it is stated that after 20.06.2023 till 28.06.2023 at any point in between deceased Kishor had come in contact with the present applicants and any of the applicants has done any such act additionally which would amount to abetment. In the aforesaid decisions of the Hon’ble Supreme Court it has been clarified that abetment requires some active participation and there should be proximity between such incident and the suicide. Here, in this case, seven days had elapsed in between and no action for the alleged incident, which could have been taken legally, has not been taken. Under such circumstance, the basic ingredients of the offence under

Section 306 of the Indian Penal Code cannot be said to have been made out requiring the applicants to face the trial. Therefore, in view of the guidelines in **State of Haryana and others vs. Chh. Bhajan Lal and others** [AIR 1992 SC 604] case is made out for exercise of powers under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

- i) Both Criminal Applications stand allowed.
- ii) The Charge Sheet No.47/2024 dated 29.02.2024 arising out of First Information Report vide Crime No.301/2023 dated 29.06.2023 registered with MIDC CIDCO Police Station, Aurangabad City, for the offence punishable under Sections 306, 504 read with Section 34 of the Indian Penal Code, 1860, stands quashed and set aside as against applicants viz. 1) **Uday Venkatrao Kulkarni**, 2) **Kalpana w/o Uday Kulkarni**, 3) **Sapna d/o Uday Kulkarni** and 4) **Smita w/o Abhishek Bhalerao** in Criminal Application No.4402 of 2023 and applicant **Abhishek Chandrakant Bhalerao** in Criminal Application No.4420 of 2023.

(**SANJAY A. DESHMUKH, J.)**

(**SMT. VIBHA KANKANWADI, J.)**

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